

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOVANA MOUKENGESHCAIE,)	
on behalf of herself)	
and all others similarly situated,)	No. 14-CV-7539-MKB-CLP
)	
Plaintiff,)	
)	CLASS ACTION
v.)	
)	
ELTMAN, ELTMAN & COOPER, P.C.,)	
LVNV FUNDING, LLC, and RESURGENT)	
CAPITAL SERVICES, L.P.,)	
)	
Defendants.)	
)	

**ATTORNEY JONATHAN R. MILLER'S DECLARATION IN
SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEY FEES, AND REPRESENTATIVE AWARD**

Under 28 U.S.C. § 1746, I, Jonathan R. Miller, do hereby declare under penalty of perjury, that the following statements are true and correct:

1. I am a principal of the Law Office of Jonathan Miller, LLC.
2. I am submitting this Declaration in support of Plaintiff's motion for final approval of the class action settlement and in support of Plaintiff's request for an award of attorney fees, costs, and expenses incurred in litigating this case.
3. My rate on this matter for the work I have done since leaving Bromberg Law Office, P.C. and opening my own office is \$350 an hour.
4. The credentials and court decisions upon which I base my hourly rate are as follows:

5. I graduated from Greenville College with a B.A. in Communication in 2002.
6. I graduated from Loyola University Chicago with a M.A. in Theology in 2007.
7. I earned my J.D. from Harvard Law School in 2011.
8. I am a member in good standing of the bars of the following state courts:

The Missouri Bar
September 2011

New York State Bar (Appellate Division, Third Department)
October 2012

North Carolina State Bar
September 2014

7. I am a member in good standing of the following federal courts:

U.S. District Court for the Southern District of New York
August 6, 2013

U.S. District Court for the Eastern District of New York
August 6, 2013

U.S. District Court for the Western District of New York
October 22, 2013

United States Court of Appeals for the Second Circuit
March 25, 2014

U.S. District Court for the Northern District of New York
May 14, 2014

United States Court of Appeals for the Fourth Circuit
February 21, 2017

U.S. District Court for the Northern District of North Carolina
March 22, 2017

U.S. District Court for the Eastern District of Missouri
April 13, 2017

U.S. District Court for the Western District of North Carolina
April 19, 2017

U.S. District Court for the Eastern District of North Carolina
April 25, 2017

U.S. District Court for the Northern District of Ohio
December 8, 2017

United States Court of Appeals for the Sixth Circuit
April 22, 2019

Background and Qualifications

9. From 2011 to 2012, I clerked for the Hon. William Ray Price, Jr. of the Supreme Court of Missouri.

10. From 2012 to 2013, I worked as a consumer debt legal associate at Start Small Think Big, Inc., a non-profit in The Bronx. This position was funded by a Harvard Law School Irving R. Kaufman Public Interest Fellowship.

11. From 2013 to 2017, I was employed by Bromberg Law Office, P.C. in New York, New York.

12. In 2017, I started my own practice in Winston-Salem, N.C., concentrating in the field of consumer protection law. In 2019, I moved my practice to my hometown of St. Louis, Mo.

13. I am a member of the National Association of Consumer Advocates.

14. I am experienced in trial and appellate court litigation and have the following reported cases, among others:

Adelman's Truck Parts Corp. v. Jones Transp., Nos. 19-3349/3387, 2020 U.S. App. LEXIS 1612 (6th Cir. Jan. 15, 2020).

Godson v. Eltman, Eltman & Cooper, P.C., No. 1:11-CV-764(EAW), 2018 U.S. Dist. LEXIS 182034 (W.D.N.Y. Oct. 23, 2018).

Moukengeschaie v. Eltman, Eltman & Cooper, P.C., No. 14 CV 7539 (MKB) (CLP), 2019 U.S. Dist. LEXIS 182337 (E.D.N.Y. Oct. 15, 2019).

First Tech. Fed. Credit Union v. Sanders, 831 S.E.2d 658 (N.C. App. 2019).

McCrobie v. Palisades Acquisition XVI, LLC, No. 1:15-CV-00018-LJV-MJR, 2019 U.S. Dist. LEXIS 148036 (W.D.N.Y. Aug. 23, 2019).

Hallmark v. Cohen & Slamowitz, LLP, 378 F. Supp. 3d 222 (W.D.N.Y. 2019).

Adelman's Truck Parts Corp. v. Jones Transp., No. 5:17-CV-2598, 2019 U.S. Dist. LEXIS 43851 (N.D. Oh. Mar. 17, 2019).

McCrobie v. Palisades Acquisition XVI, LLC, 359 F. Supp. 3d 239 (W.D.N.Y. 2019).

Spencer v. Portfolio Recovery Assocs., LLC, 822 S.E.2d 739 (N.C. App. 2018).

Godson v. Eltman, Eltman & Cooper, P.C., 328 F.R.D. 35 (W.D.N.Y. 2018).

Winans v. Franklin Collection Serv., No. 17-cv-659, 2018 U.S. Dist. LEXIS 138709 (M.D.N.C. Aug. 16, 2018).

Gaterman v. Kavulich & Assocs., P.C., No. 4:17-CV-2837-JCH, 2018 U.S. Dist. LEXIS 90193 (E.D. Mo. May 23, 2018).

Adelman's Truck Parts Corp. v. Jones Transp., No. 5:17-CV-2598, 2018 U.S. Dist. LEXIS 41004 (N.D. Oh. Mar. 13, 2018).

Franco v. A Better Way Wholesale Autos, Inc., 690 Fed. Appx. 741 (2d Cir. 2017).

Wendel v. Mullooly, Jeffrey, Rooney & Flynn, LLP, 689 Fed. Appx. 45 (2d Cir. 2017).

Kelen v. Nordstrom, Inc., 259 F. Supp. 3d 75 (S.D.N.Y. 2017).

Moukengeschaie v. Eltman, Eltman & Cooper, P.C., No. 14-CV-7539 (MKB), 2017 U.S. Dist. LEXIS 161260 (E.D.N.Y. Sept. 29, 2017).

Schwartz v. HSBC Bank USA, N.A., 14 Civ. 9525 (KPF), 2017 U.S. Dist. LEXIS 94019 (S.D.N.Y. June 19, 2017).

Schwartz v. HSBC Bank USA, N.A., 14 Civ. 9525 (KPF), 2017 WL 95118 (S.D.N.Y. Jan. 9, 2017).

Godson v. Eltman, Eltman & Cooper, P.C., 11-CV-0764(EAW), 2017 WL 77109 (W.D.N.Y. Jan. 9, 2017).

Strubel v. Comenity Bank, 842 F.3d 181 (2d. Cir. 2016).

Eades v. Kennedy, PC Law Offices, 12-CV-6680-DGL-JWF, 2016 WL 6988913 (W.D.N.Y. Nov. 22, 2016).

McCrobie v. Palisades Acquisition XVI, LLC, 664 Fed. Appx. 81 (2d Cir. 2016).

Dixon v. A Better Way Wholesale Autos, Inc., 692 Fed. Appx. 664 (2d Cir. 2016)

Strubel v. Capital One Bank (USA), N.A., 179 F. Supp. 3d 320, (S.D.N.Y. 2016).

Schwartz v. HSBC Bank USA, N.A., 160 F. Supp. 3d 666 (S.D.N.Y. 2016).

Godson v. Eltman, Eltman & Cooper, P.C., 177 F. Supp. 3d 803, (W.D.N.Y. 2016).

Jackson v. Lowe's Cos., 15-cv-4167 (ADS)(ARL), 2016 U.S. Dist. LEXIS 146159 (E.D.N.Y. Oct. 21, 2016).

Moukengeschaie v. Eltman, Eltman & Cooper, P.C., No. 14-CV-7539 (MKB), 2016 WL 1274541 (E.D.N.Y. Mar. 31, 2016).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-842W(F), 2016 WL 1127800 (W.D.N.Y. Mar. 23, 2016).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-842W(F), 2016 WL 1127799 (W.D.N.Y. Mar. 23, 2016).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-842W(F), 2016 WL 1128494 (W.D.N.Y. Mar. 23, 2016).

Clarke v. Hudson Valley Fed. Credit Union, No. 14-cv-5291 (KBF), 2016 WL 884667 (S.D.N.Y. Mar. 8, 2016).

Godson v. Eltman, Eltman & Cooper, P.C., No. 11-CV-764 (EAW), 2015 WL 9434228 (W.D.N.Y. Dec. 22, 2015).

Godson v. Eltman, Eltman & Cooper, P.C., No. 11-CV-0764S(Sr), 2015 WL 5784908 (W.D.N.Y. Sept. 30, 2015).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-842 (EAW), 2015 WL 4483959 (W.D.N.Y. July 22, 2015).

Dykes v. Portfolio Recovery Assocs., LLC, 111 F. Supp. 3d 739 (E.D. Va. 2015).

Eades v. Kennedy, PC Law Offices, 799 F.3d 161 (2d Cir. 2015) (reversing district court's order dismissing complaint).

Hallmark v. Cohen & Slamowitz, LLP, 307 F.R.D. 102 (W.D.N.Y. 2015).

Dykes v. Portfolio Recovery Assocs., LLC, 306 F.R.D. 529 (E.D. Va. 2015).

Hallmark v. Cohen & Slamowitz, LLP, 304 F.R.D. 165 (W.D.N.Y. 2015).

DeJesus v. City of New York, No. 13-CV-8366 (JPO), 2015 WL 1925391 (S.D.N.Y. Apr. 28, 2015).

Schwartz v. Comenity Capital Bank, No. 13 Civ. 4896(JGK), 2015 WL 410321 (S.D.N.Y. Feb. 2, 2015).

Strubel v. Comenity Bank, No. 13-cv-4462 (PKC), 2015 WL 321859 (S.D.N.Y. Jan. 23, 2015).

Hallmark v. Cohen & Slamowitz, LLP, 302 F.R.D. 295 (W.D.N.Y. 2014).

Kelen v. World Fin. Network Nat'l Bank, 302 F.R.D. 56 (S.D.N.Y. 2014).

Clarke v. Hudson Valley Fed. Credit Union, No. 14-CV-5291(VB), 2014 WL 6791184 (S.D.N.Y. Dec. 2 2014).

Godson v. Eltman, Eltman & Cooper, P.C., No. 11-CV-0764S(Sr)., 2014 WL 4627216 (W.D.N.Y. Sept. 15, 2014).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-00842S(F), 2014 WL 2028426 (W.D.N.Y. Sept. 15, 2014).

Hallmark v. Cohen & Slamowitz, LLP, 299 F.R.D. 407 (W.D.N.Y. 2014).

Hallmark v. Cohen & Slamowitz, LLP, 300 F.R.D. 110 (W.D.N.Y. 2014).

Hallmark v. Cohen & Slamowitz, LLP, No. 11-CV-842S(F), 2014 WL 51322 (W.D.N.Y. Jan. 8, 2014).

DeJesus v. City of New York, 55 F. Supp. 3d 520 (S.D.N.Y. 2014).

15. I am also experienced in consumer fraud class action litigation and have participated in the following filed cases, among others:

Hallmark v. Cohen & Slamowitz, LLP, W.D.N.Y., Case No. 11-CV842 (FDCPA settlement class certification; settlement approved).

Godson v. Eltman, Eltman & Cooper, P.C., W.D.N.Y., Case No. 11-CV-764 (FDCPA settlement class certification; settlement approved).

Jasper v. Account Control Technology, Inc., E. D. Virginia, Case No. 13-CV-296 (FDCPA settlement class certification; settlement approved)

Milo v. Barneys, Inc., S.D.N.Y., Case No. 10-cv-3133 (TILA settlement class certification of 1,500 class members; settlement approved)

Morris v. CACH, LLC, D. Nev., 13-CV-270 (statewide Nevada FDCPA settlement class certification of over 1,000 members; settlement approved)

Biber v. Pioneer Credit Recovery, Inc., EDVA, Case No. 16-CV-804 (nationwide settlement class and settlement approved)

16. I currently serve on the National Association of Consumer Advocates Legislative Policy Committee, and I have lobbied Congress concerning consumer-protection issues as part of NACA's Lobby Day in 2013 and 2017.

17. I have advised several clients concerning bankruptcy and consumer law as a volunteer for Legal Aid of North Carolina's "Lawyer on the Line" program.

18. I have been an adjunct instructor at Wake Forest University School of Divinity, where I have taught a course on theological issues related to consumer debt, and a course on the intersection of law and religion.

My Hourly Rate

19. I am requesting the Court to approve a rate of \$350 per hour for the work I have done on this case since opening my office. As demonstrated below, this rate is well in line with the rates charged by attorneys of similar skill and experience in my market, and approving my out-of-district rate is appropriate here given the specialized nature of this case.

20. About one year ago, the Eastern District of Missouri, where my practice is currently located, awarded a lawyer with five and a half hours of experience an hourly rate of \$300 in an FDCPA case that was not a class action. *See Breeden v. Consumer Adjustment Co.*, No. 4:18-CV-1944(JAR), 2019 U.S. Dist. LEXIS 59614 at *8 (E.D. Mo. Apr. 8, 2019).

21. Considering that I have about eight-and-a-half years of experience, and this class-action was more complicated and required greater skill than an individual FDCPA case, my requested rate of \$350 per hour is appropriate.

22. Moreover, the Eastern District of Missouri regularly relies upon the United States Consumer Law Attorney Fee Survey as a source for determining hourly rates in cases such as this. *See Id.*; *Morgan v. Vogler Law Firm, P.C.*, No. 4:15-CV-1654 (SNLJ), 2018 U.S. Dist. LEXIS 203969 at *4 (E.D. Mo. Dec. 3, 2018). The most recently published edition of the Survey, which is available online at

<https://burdgelaw.com/wp-content/uploads/2019/10/US-Consumer-Law-Attorney-Fee-Survey-Report-2017-2018.pdf>, indicates that the average attorney fee for a

Missouri consumer protection lawyer with six to ten years of experience is \$350.

Thus, it is likely that the Eastern District of Missouri would approve the requested rate of \$350 in a case such as this one.

23. As a point of reference, in 2019 the Western District of New York recently approved a rate of \$300 for the work I did in the cases of *Godson v. Eltman, Eltman & Cooper, P.C.* and *Hallmark v. Cohen & Slamowitz, LLP*. Like this case, *Godson* and *Hallmark* were FDCPA class actions that presented several complex legal and factual issues.

24. Apart from *Hallmark* and *Godson*, I have only one other decision in a contested fee decision: *Clarke v. Hudson Valley Fed. Credit Union*, 14-cv-5291(KBF), 2016 U.S. Dist. LEXIS 29475 (S.D.N.Y. Mar. 8, 2016). That case involved work I did on a Servicemembers Civil Relief Act case while I was an associate at Bromberg Law Office, P.C. in New York, NY. I participated in the case from October 2014 to November 2015.

25. In *Clarke*, my firm requested a rate of \$250/hr for my work. While, overall, the judge in *Clarke* did not award the plaintiff the full amount of attorney fees he requested, the judge did not take issue with my rate of \$250.

26. Finally, the specialized experience I gained while working on complex consumer protection class actions at Bromberg Law Office, P.C. make me unique in

this legal services market, which is another reason I believe it is appropriate to bill at a \$350 per hour rate in such cases.

27. My contemporaneous records reflecting my office's time and disbursements are attached as Exhibit A.

28. Based upon my records, I have accumulated 66.8 hours of time at a billing rate of \$350 an hour, for a total of \$23,380 in time.

29. My records also indicate that my office incurred \$811.44 in costs on this case.

30. Accordingly, the total amount in billable fees, costs and disbursements to date for my office is \$24,191.44.

31. I am anticipating an additional 3 hours of time to file Plaintiff's materials in support of final approval, to prepare for the final approval hearing, and to telephonically attend the final approval hearing.

32. For these reasons, I respectfully ask the Court to grant Plaintiff's motion for final approval and for attorney fees and costs.

/s/ Jonathan R. Miller
Jonathan R. Miller